

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1993

CRIMINAL PRACTICE AND PROCEDURE

(Tuesday, May 25, 1993)

Instructions to Students:

- (a) Time: 3 1/2 Hours.
 - (b) Answer FIVE questions.
 - (c) In answering any question, a student may reply by reference to the law of any Commonwealth Caribbean territory, but must state at the beginning of the answer, the name of the relevant territory.
 - (d) It is unnecessary to transcribe the questions you attempt.
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QUESTION 1

On the 1st of January 1993, Strolley and Kemp were in a bar on Rum Lane drinking. Kane, a friend of Kemp, approached them and suggested that Kemp leave the bar. Strolley told Kane that he was a busybody and threatened to throw him out of the bar if he did not leave. Whereupon, Kane pulled his gun and fired at Strolley who flung himself to the ground. The shot missed Strolley but grazed Kemp's chest and after ricocheting from a wall hit Cooper the bartender, in the leg causing a wound.

A hostile crowd rushed at Kane who whilst pointing the gun at the crowd started to move backwards towards the door. He was grabbed from behind by Constable Alert who was just entering the bar. As the constable held Kane the gun went off hitting Bullard, another customer in the bar.

Draft the indictment for trial in the Supreme/High Court in respect of the offences committed by Kane against Strolley, Kemp and Bullard.

QUESTION 2

After Lewis' relationship with a girl had ended he made threats to kill her and her new boyfriend. Subsequently, Lewis caused criminal damages to the property of the girl and after being arrested and taken to a police station assaulted a police officer.

Lewis was charged with threats to kill, malicious damage to property and also with common assault on a police officer.

At the trial the judge ruled that the count alleging common assault could lawfully be joined on the indictment.

Lewis was convicted on all three counts.

Lewis wishes to appeal and would like to know-

- (i) whether or not the judge was right in permitting the joinder;
- (ii) what the effect of a misjoinder would be.

Advise him.

QUESTION 3

Burgess was convicted for assault. The incident was said to have taken place outside a bar. A prosecution witness, Nolan, claimed to have seen the incident from a seat inside the bar and identified the defendant as the assailant. The attorney-at-law representing the defendant applied for the bench to visit the locus in quo. At the locus the three justices, their clerk, the prosecutor and the defendant's attorney-at-law went into the bar. The defendant was left outside. It is now seven days since the conviction of the defendant who was fined and paid the fine on the same day.

He now wishes to appeal and wants to know if on the facts outlined he has any good ground of appeal and what he must now do to perfect an appeal

Advise him.

QUESTION 4

A car driven by Speedy was stopped by the police at a road block. Moody and Smokey were passengers in the car. Constable Searchwell asked all three men to get out of the car. The constable told them he was going to search the car and frisk them. He searched the car but nothing incriminating was found. He then frisked the men. In the trousers pocket of each man he found a small parcel containing ganja. Constable Searchwell asked them where they were coming from. They refused to answer. He arrested and charged each of them for possession of ganja.

Three informations were laid. At the summary trial before a magistrate the prosecutor applied to the court for leave to have the three informations tried at the same time. The application was not opposed by counsel for the defence. In fact, he told the court that it would be a waste of time to have three trials. The magistrate granted the application. All three accused persons were convicted.

They now seek your advice as to whether or not the magistrate erred in allowing the informations to be tried together.

Advise them.

QUESTION 5

Write notes on THREE of the following-

- (i) Order of Speeches;
- (ii) Suspended Sentence;
- (iii) Taking of the verdict of the jury in respect of alternative counts e.g. larceny and receiving.
- (iv) Abandonment of appeal;
- (v) Power of the Court of Appeal to order a new trial.

QUESTION 6

Answer ANY ONE of the following-

- (A) Discuss FOUR of the major procedural differences between felonies and misdemeanours.
- (B) (i) Discuss:
 - (a) the power of the D.P.P to enter a nolle prosequi and
 - (b) the jurisdiction of the Resident Magistrate in respect of criminal offences.
- (C) Indicate the courses open to an accused on arraignment in the Supreme/High Court and comment on any THREE of the courses.

QUESTION 7

B was convicted for manslaughter on an indictment which charged him for murder.

According to the transcript of the shorthand notes the jury first retired at 10.15 a.m. They returned to Court at 10.45 a.m to ask for a map which could not be given to them. They left the court five minutes later and then returned at 11.10 a.m.

According to the official court record what then transpired follows-

Registrar: Mr. Foreman please stand.

Members of the jury have you arrived at your verdict?

Foreman: Yes, Sir.

Q. Is your verdict unanimous?

A. Yes in respect of murder but no in respect of manslaughter.

Q. How say you is the accused guilty or not guilty of murder?

A. Not guilty.

Judge: How are you divided in respect of manslaughter?

A. 8 - 1

At this stage the Judge told them to go back and try to arrive at a unanimous verdict and if they could not do that, what they were entitled to do.

At 11.30 a.m. they were again escorted out of the court to their room. They returned at 12.25 p.m.

The Judge plunged straight in and said "Mr. Foreman have you been able to reach a unanimous verdict"?

The foreman replied "Yes my Lord".

Judge: How say all of you guilty or not guilty of manslaughter.

Foreman: Guilty sir.

However, after the allocutus was put, but before B had been sentenced and before the jury had been discharged the foreman told the court that he had made an error and that one juror had dissented from the verdict.

The judge accepted the majority verdict and sentenced B. B is not satisfied and wishes to appeal.

Advise him as to his chances of success.

QUESTION 8

Reynold and Simeon were arraigned before Justice Farr and a jury for the murder of Owen. Both Reynold and Simeon pleaded "Not Guilty". They were put in charge of the jury and the trial proceeded. During the opening of the case for the prosecution the attorneys-at-law for the accused men interrupted and said that their clients wished to change their pleas to guilty of manslaughter subject to the acceptance by the judge and the prosecution.

The trial judge agreed to accept the pleas and proceeded to sentence each accused to three years hard labour and thereafter discharged the jury.

Two days later Simeon's relatives consulted you and complained that they were dissatisfied with what transpired at the trial.

Advise the accused.
